80-1932

IN THE SUPREME COURT
OF THE
UNITED STATES

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OCTOBER TERM, 1980

No. _____

DONALD C. DAVIS, JR.,

Petitioner,

v.

STATE OF GEORGIA,

Respondent.

PETITION FOR A
WRIT OF CERTIORARI
TO THE COURT OF APPEALS
OF THE STATE OF GEORGIA

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IN THE SUPREME COURT
OF THE
UNITED STATES

OCTOBER TERM, 1980

No. _____

DONALD C. DAVIS, JR.,

Petitioner,

v.

STATE OF GEORGIA,

Respondent.

THIS IS A COMPANION CASE TO CASE NUMBER 80-1889, BERNARD PIANKA V. STATE OF GEORGIA, TIMELY FILED AND DOCKETED IN THIS COURT PREVIOUSLY

COMES NOW DONALD C. DAVIS, JR. and prays that a Writ of Certiorari issue to review the judgment of the Georgia Court of Appeals entered in the above-captioned case.

QUESTIONS PRESENTED

1. Does the "open fields" doctrine of Hester v. United States justify a warrantless aerial surveillance of a fenced, posted, isolated farm, specifically the trailer-home and areas immediately surrounding the residence, where the aerial search was conducted in a non-routine manner without probable cause and for the sole purpose of searching for contraband?

2. Did Katz v. United States overrule or modify the "open fields" doctrine enunciated in Hester v. United States?

3. Can an individual have a reasonable expectation of privacy in an area which might traditionally be considered an "open field" where he purposefully excludes

others, fences and posts the property, has locked entrances and the geography of the area precludes normal observation?

4. Must the Government meet the prerequisites of the plain view doctrine that (1) officers are lawfully in the position to obtain the view; (2) discovery is inadvertent; and (3) object viewed is immediately seen to be incriminating in order to justify an "open field" exception to the Fourth Amendment?[1]

OPINIONS BELOW

The Supreme Court of Georgia denied Petitioner's Application for Writ of Certiorari on March 13, 1981. The opinion of the Georgia Court of Appeals affirming

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[1] Other parties to the proceeding: Petitioner was tried along with three co-defendants: Norman E. Williams, Marion W. Moore and Bernard W. Pianka. The Georgia Court of Appeals affirmed the convictions of Williams, Pianka and Davis, while reversing as to Moore. These individuals are the only other parties to the action.

Davis' conviction, is as yet unreported.

JURISDICTION

The Supreme Court of Georgia denied Petitioner's Application for Writ of Certiorari on March 13, 1981. This petition for a Writ of Certiorari was filed within 60 days of that date pursuant to Rule 20(1). This Court's jurisdiction is invoked under 28 U.S.C. § 1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution provides:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches nd seizures, shall not be violated, and no Warrants shall issue, but upon probable ause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

United States Constitution, Amendment Fourteen, Section One:

> "All persons born or naturalized in the United States, and

> subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they may reside. No State shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; or deny to any person within its jurisdiction the equal protection of the laws."

Petitioner Donald C. Davis, Jr. respectfully adopts the Statement of the Case, Reasons for Granting the Writ, and Conclusion of the Brief in Support of the Petition for Writ of Certiorari filed by co-petitioner Bernard W. Pianka, including appendices on May 8, 1981, as if the entire petition filed on behalf of Petitioner Pianka were repeated verbatim herein.

NEELY, PLAYER, EICHELBERGER
HAMILTON, HINES & WELCH

By:

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